

Message Text

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EPA-01 ERDA-05 FMC-01 TRSE-00 H-02 INR-07 INT-05

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C O N F I D E N T I A L USUN 3141

FROM: LOS DEL

E.O. 11652 GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT AUGUST 5

1. INFORMAL PLENARY CONTINUED CONSIDERATION OF ARTICLE 7,
PART IV, RSNT AUGUST 5. EVENSEN OF NORWAY CHAIRED THE
MEETING IN THE ABSENCE OF AMERASINGHE.

2. CHILE ANNOUNCED THAT ARTICLE 7 IS ONE OF THE MOST
IMPORTANT ARTICLES IN THE CONVENTION AND INDICATED THAT,
WHILE THEIR POSITION HAS BEEN THAT CDS SHOULD NOT BE DIS-
CUSSED UNTIL THE REST OF THE TEXT IS SETTLED, IT IS NOW
APPROPRIATE TO TAKE IT UP. CHILEAN REP. INDICATED IT IS
ESSENTIAL TO EXCLUDE FROM CDS MATTERS RELATING TO SOVEREIGN
RIGHTS, AND THAT THIS IS REFLECTED IN ARTICLE 18 TO SOME
EXTENT. EXCEPTIONS COULD BE ADDED TO THE EXCLUSION IN HIS
DELEGATION'S VIEW WITH RESPECT TO SCIENTIFIC RESEARCH AND
FREEDOM OF COMMUNICATIONS AND QUOTE OTHER LEGITIMATE USES OF
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THE SEA, UNQUOTE BUT THE REFERENCE IN PARA. 1(A) TO OTHER

SUBSTANTIVE RIGHTS CANNOT BE ACCEPTED BECAUSE IT GOES TOO FAR IN UNDERMINING THE EXCLUSION OF SOVEREIGN RIGHTS.

3. YUGOSLAVIA SUPPORTED THE NETHERLANDS PROPOSAL ON ARTICLE 7 (I.E. APPLY ART.7 ONLY TO PROCEDURES PROVIDED FOR IN THIS PART, NOT REPEAT NOT THIS CONVENTION) AND EXPRESSED THE VIEW THAT A PROLIFERATION OF DISPUTE SETTLEMENT PROCEDURES COULD GENERATE DISPUTES. JAPAN MADE A SUGGESTION SIMILAR TO UK PROPOSAL TO MERGE PARAS. 1 AND 2, AND SUPPORTED NETHERLANDS PROPOSAL. THIS GENERAL APPROACH WAS SUPPORTED BY MANY SPEAKERS. SEVERAL EMPHASIZED THE IMPORTANCE OF RETAINING A CROSS REFERENCE TO ARTICLE 18: USSR POINTED OUT THAT CROSS REFERENCE TO ARTICLE 18 SHOULD BE ACCOMPANIED BY CROSS REFERENCE TO ARTICLE 9 AND PERHAPS OTHERS IN SECTION II; OTHERS NOTED THAT REFERENCE IN EXISTING PARA. 2 TO QUOTE IN ACCORDANCE WITH SECTION II UNQUOTE INCORPORATED ALL RELEVANT ARTICLES. ECUADOR SAID ACCEPTANCE OF ARTICLE 7 IS CONTINGENT ON MAINTAINING CROSS REFERENCE TO ARTICLE 18. JAPAN SUPPORTED NEED FOR A TIME LIMIT ON SECTION I PROCEDURES, WHILE ECUADOR POINTED OUT DIFFICULTIES A UNIFORM TIME LIMIT WOULD ENTAIL.

4. AUSTRALIA SUPPORTED MAINTENANCE OF SOVEREIGN RIGHTS EXCLUSION BUT SUGGESTED CDS SHOULD APPLY TO DISPUTES ON LIMITS OF NATIONAL JURISDICTION VIS-A-VIS, THE INTERNATIONAL SEABED AREA, ENVIRONMENT, ARBITRARY RESTRAINTS ON COMMUNICATION, SCIENTIFIC RESEARCH, AND LEFT OPEN THE QUESTION OF FISHERIES.

5. OMAN WAS THE FIRST AND SO FAR ONLY SPEAKER TO EXPRESS VIEW THAT PRINCIPLE OF COMPULSORY JURISDICTION HAS NOT BEEN ACCEPTED AND ISSUE IS, PREMATURE UNTIL OTHER TREATY PROVISIONS SETTLED.

6. EL SALVADOR POINTED OUT THAT THE ARTICLE 18 EXCLUSIONS LEAVE SOME DISPUTES SUBJECT ONLY TO THE SECTION I NON-BINDING PROCEDURES AND SUGGESTED AMENDMENT TO ARTICLE 18 TO PROVIDE COMPLUSORY CONCILIATION FOR ALL OR SOME OF THE EXCLUSIONS SPECIFIED THERE. US SOUGHT TO DOWNPLAY VIABILITY OF COMPULSORY CONCILIATION OPTION WITHOUT ATTACKING EL CONFIDENTIAL

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SALVADOR, WHICH HAS BEEN NOTABLY HELPFUL ON CDS THROUGHOUT.

7. BAHRAIN SUGGESTED NEW TEXT ARTICLE 7 IN LIGHT OF DEBATE AS FOLLOWS: QUOTE SUBJECT TO THE PROVISIONS OF ARTICLE 18 OF THIS CHAPTER, ANY DISPUTE RELATING TO THE INTERPRETATION OR APPLICATION OF THIS CONVENTION SHALL, WHEN NO SETTLEMENT IS REACHED BY RECOURSE TO THE PROVISIONS OF SECTION I, BE SUBMITTED AT THE REQUEST OF ANY PARTY TO THE DISPUTE TO THE

FORUM HAVING JURISDICTION UNDER THE PROVISIONS OF SECTION II
OF THIS CHAPTER UNQUOTE.
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